

THIRTY-FIFTH DAY
(Tuesday, March 15, 1983)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Absent-excused: Glasgow, Parker.

A quorum was announced present.

The Reverend John W. Price, St. George's Episcopal Church, Austin, offered the invocation as follows:

O God, without You we cannot please You. Grant to the Senators and their staff Your presence for their comfort, Your spirit of wisdom and patience, as they face decisions and seeming trivia mixed together. Keep the people You have given us to serve ever in our minds as we struggle with unclear decisions and ambiguous feelings. Forgive us our sins, both personal and political, that putting sin and guilt behind us, we may, with Your courage, walk forth to serve You as You have asked, with the love You have commanded. In Your Holy Name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Glasgow was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Parker was granted leave of absence for today on account of important business on motion of Senator Truan.

CO-AUTHOR OF SENATE BILL 7

On motion of Senator Farabee and by unanimous consent, Senator Brown will be shown as Co-author of S.B. 7.

CO-AUTHOR OF SENATE BILL 28

On motion of Senator Farabee and by unanimous consent, Senator Brown will be shown as Co-author of S.B. 28.

CO-AUTHORS OF SENATE BILL 94

On motion of Senator Lyon and by unanimous consent, Senators Brown and Leedom will be shown as Co-authors of S.B. 94.

CO-AUTHOR OF SENATE BILL 435

On motion of Senator Farabee and by unanimous consent, Senator Truan will be shown as Co-author of S.B. 435.

CO-AUTHOR OF SENATE BILL 612

On motion of Senator McFarland and by unanimous consent, Senator Brown will be shown as Co-author of S.B. 612.

CO-AUTHOR OF SENATE BILL 714

On motion of Senator Doggett and by unanimous consent, Senator Lyon will be shown as Co-author of S.B. 714.

CO-AUTHOR OF SENATE BILL 895

On motion of Senator Caperton and by unanimous consent, Senator Doggett will be shown as Co-author of S.B. 895.

REPORTS OF STANDING COMMITTEES

Senator Farabee submitted the following report for the Committee on State Affairs:

S.B. 995
S.B. 60
S.B. 412 (Amended)
S.B. 510
S.B. 512
S.B. 554
S.B. 555
S.B. 664
C.S.S.B. 288 (Read first time)
C.S.S.B. 221 (Read first time)
C.S.S.B. 285 (Read first time)

Senator Jones submitted the following report for the Committee on Finance:

C.S.S.B. 186 (Read first time)
C.S.S.B. 281 (Read first time)
C.S.S.B. 282 (Read first time)

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

S.B. 635

Senator Brooks submitted the following report for the Committee on Health and Human Resources:

C.S.S.B. 561 (Read first time)
C.S.S.B. 477 (Read first time)
C.S.S.B. 394 (Read first time)
C.S.S.B. 435 (Read first time)

RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate the following enrolled resolutions:

H.C.R. 90
H.C.R. 91
H.C.R. 95
S.C.R. 39

SENATE BILLS AND RESOLUTION ON FIRST READING

On motion of Senator Harris and by unanimous consent, the following bills and resolution were introduced, read first time and referred to the Committee indicated:

S.B. 1204 by Brooks Natural Resources
Relating to commercial and noncommercial shrimp limits.

S.B. 1205 by Brooks State Affairs
Relating to a motor vehicle emissions inspection and maintenance program; amending the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), by adding Subsections (d), (e), (f), (g), and (h), Section 142.

S.B. 1206 by Brooks Economic Development
Relating to third party reimbursement of health care services; adding Article 4542d, V.T.C.S.; and declaring an emergency.

S.B. 1207 by Brooks Education
Relating to vacancies on the board of trustees of an independent school district.

S.B. 1208 by Brooks State Affairs
Relating to the issuance of a driver's license to a person from another state and to the renewal of a driver's license by mail.

S.B. 1209 by Sarpalius Natural Resources
Relating to the issue of certain licenses by the Department of Agriculture.

S.B. 1210 by Sarpalius Intergovernmental Relations
Relating to establishment of a juvenile board for Hartley County.

S.B. 1211 by Parker Economic Development
Relating the repeal of the state law requiring that certain businesses maintain and make public certain personal information about their customers.

S.B. 1212 by Sharp Intergovernmental Relations
Relating to the enforcement of land use restrictions contained in subdivision plats in certain counties.

S.B. 1213 by Brooks Health and Human Resources
Relating to regulation of the practice of Occupational Therapy.

S.B. 1214 by Brooks Natural Resources
Relating to certain licensing requirements and penalties under the Liquefied Petroleum Gas Code; providing a penalty.

S.B. 1215 by Brooks Intergovernmental Relations
Relating to distribution of a fire fighter's relief and retirement benefits in certain cities; amending Sections 7 and 11 of Chapter 432, Acts of the 64th Legislature, Regular Session, 1975 (Sec. 7 and 11, Article 6243e.2, Vernon's Texas Civil Statutes) as amended; and declaring an emergency.

S.B. 1216 by Brooks Health and Human Resources
Relating to the regulation of Child-Care facilities and the definitions of such facilities.

S.C.R. 49 by Harris Administration
Granting Mark Homes, Inc., permission to sue the State.

MESSAGE FROM THE PRESIDENT OF THE SENATE

Pursuant to the provisions of S.R. 264, the Chair gives notice that the drawing for two- and four-year terms will be held at 10:30 a.m. on Thursday, March 17, 1983.

The Chair appoints the following committee to supervise the drawing: Senators Blake, Chairman; Mauzy, Brooks, Farabee and Jones.

Respectfully submitted,

/s/William P. Hobby

Lieutenant Governor of Texas

COMMITTEE SUBSTITUTE SENATE BILL 1 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1, Relating to the offenses of driving while intoxicated and driving under the influence of a controlled substance or drug and the insurance consequences of those offenses.

The bill was read second time.

Senator Sarpalius offered the following amendment to the bill:

Amend Section 15 of **C.S.S.B. 1** by adding the following as Subsection (e) and relettering the existing Subsection (e) accordingly:

(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's alcoholic condition, the court may require that the defendant pay for all or part of the cost of such rehabilitation.

The amendment was read and was adopted.

Senator Sarpalius offered the following amendment to the bill:

Amend **C.S.S.B. 1** by adding the following section as Section 22, and renumbering the existing Sections 22, 23, 24 and 25 accordingly:

SECTION 21. (a) Each county with a population of 25,000 or more, according to the most recent federal census, shall purchase and maintain electronic devices capable of visually recording a person arrested within the county for an offense under Article 67011-1, Revised Statutes.

(b) The sheriff of the county shall determine, upon approval by the County Commissioners Court, the number of devices necessary to ensure that a peace officer arresting a defendant for the offense listed in Subsection (a) of this section may visually record the defendant's appearance within a reasonable time after the arrest.

(c) The fact that an arresting officer or other person acting on behalf of the state failed to visually record a person arrested for an offense listed in Subsection (a) of this section is not admissible at the trial of the offense.

The amendment was read and was adopted by the following vote: Yeas 18, Nays 11.

Yeas: Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Howard, Jones, Kothmann, Leedom, Montford, Parmer, Sarpalius, Sharp, Sims, Traeger, Uribe, Williams.

Nays: Blake, Harris, Henderson, Lyon, Mauzy, McFarland, Santiesteban, Truan, Vale, Washington, Whitmire.

Absent-excused: Glasgow, Parker.

Senator Santiesteban offered the following amendment to the bill:

Amend C.S.S.B. 1 by striking everything below the enacting clause and substituting therefor the following:

SECTION 1. Amend Title 10 of the Penal Code by adding a new Chapter 49, to read as follows:

CHAPTER 49. INTOXICATION OFFENSES

Section 49.01. Definitions

49.02. Public Intoxication

49.03. Driving Under The Influence

49.04. Driving While Intoxicated

49.05. D.W.I. Assault

49.06. D.W.I. Homicide

49.07. Presumption

49.08. Evidence

Sec. 49.01. DEFINITIONS. In this Chapter:

(1) "Intoxicated" means the loss of normal mental or physical faculties resulting from the voluntary introduction of alcoholic or other substances or a combination thereof, into the body to the extent there is an inability to function as an ordinary prudent person in full possession of faculties under like circumstances.

(2) "motor vehicle" means any motor-propelled vehicle.

(3) "public place" has the meaning assigned by Subdivision (29), Section 1.07, Penal Code.

Sec. 49.02. PUBLIC INTOXICATION. (a) An individual commits an offense if he knowingly or intentionally appears in a public place when he is intoxicated to the degree that he endangers himself or another.

(b) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or others.

(c) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes by a licensed physician.

(d) An offense under this section is a Class C misdemeanor.

Sec. 49.03. DRIVING UNDER THE INFLUENCE. (a) An individual commits an offense if, while intoxicated, he knowingly or intentionally operates a motor vehicle in a public place.

(b) An offense under this section is a Class B misdemeanor.

Sec. 49.04. DRIVING WHILE INTOXICATED. (a) An individual commits an offense if he commits an offense as defined in Section 49.02 of this Code and;

(1) by accident or mistake and by reason of such intoxication causes bodily injury to another;

(2) by accident or mistake and by reason of such intoxication causes damage to property of another;

(3) his blood-alcohol level was 0.20 per cent or more; or

(4) he was driving in excess of the speed limit by 30 miles an hour or more in the course of commission of the offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 49.05. D.W.I. ASSAULT. (a) An individual commits an offense if he commits an offense as defined in Section 49.02 of this Code and by accident or mistake and by reason of such intoxication causes serious bodily injury to another.

(b) An offense under this section is a felony of the third degree.

(3) if he consents to take the test and, if the results of that test demonstrate his blood-alcohol level was 0.10 per cent or more, his license, permit, or privilege to operate a motor vehicle will be suspended for a period of 90 days.

(b) If a person under arrest refuses, upon the request of a peace [law enforcement] officer, to submit to a [chemical-breath] test [designated by the law enforcement officer] as provided in Section 1, none shall be required [given; but the Texas Department of Public Safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the breath test upon the request of the law enforcement officer;]

(c) If the person refuses to submit to a test, the officer before whom the refusal was made shall immediately make a sworn written report of the refusal to the director of the Texas Department of Public Safety.

(d) The director shall approve the form of the report. The report must show:

(1) the grounds for the officer's belief that the person had been operating a motor vehicle while intoxicated; and

(2) that the person refused to submit to a test.

(e) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective the date the person receives notice by certified mail or three days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the suspension or denial becomes effective, the department receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as [matter for] a hearing under [as provided in] Section 22(a), Chapters 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes). If[, if], upon such hearing the court finds (1) that probable cause existed that such person was operating [driving or in actual physical control of] a motor vehicle in a public place [the highway] while intoxicated [under the influence of an intoxicating liquor at the time of the arrest by the officer], (2) that the person was placed under arrest by the officer [at such time] and before offering the person an opportunity to submit to the test upon request of the officer, the court shall confirm the suspension or denial. [Director of the Texas Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for the period ordered by the court, not to exceed one (1) year. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for a period ordered by the court, but not to exceed one (1) year.]

(f) If the person submits to a test and the results of the test demonstrate a blood-alcohol level of 0.10 per cent or more, the officer administering the test shall immediately make a sworn written report of the results of the test to the director of the Texas Department of Public Safety.

(g) The director shall approve the form of the report. The report must show:

(1) the grounds for the officer's belief that the person has been operating a motor vehicle while intoxicated; and

(2) that the results of the test demonstrated a blood-alcohol level of 0.10 per cent or more.

(h) When the director receives the report, the director shall suspend the person's license, permit or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective the date the director sends notice by certified mail or three days after the date the director sends notice by certified mail, if the person has not accepted delivery of the

notice. If, not later than the 20th day after the date on which the suspension or denial becomes effective, the department receives a written demand that a hearing be held, the department shall not later than the 10th day after the receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as the hearing provided for in Subsection (e) of this section. If, upon such hearing the court finds (1) that probable cause existed that such person was operating a motor vehicle in a public place while intoxicated, (2) that the person was placed under arrest by the officer and before offering the person an opportunity to submit to the test upon request of the officer, the court shall confirm the suspension or denial.

(i) If, after the hearing, the court finds in the negative one of the issues required by Subsection (e) or Subsection (h) of this section, the director shall reinstate any license, permit, or privilege to operate a motor vehicle and shall rescind any order prohibiting the issuance of a license or permit on the basis of the person's refusal to give a specimen under Subsection (c) of this section or on the basis of a demonstration by the test of a blood-alcohol level of 0.10 per cent or more. [Provided, however, that should such a person be found "not guilty" of the offense of driving while under the influence of intoxicating liquor or if said cause be dismissed, then the Director of the Texas Department of Public Safety shall in no case suspend such person's driver's license, or, in the event that proceedings had been instituted resulting in the suspension of such person's driver's license, then the Director of the Texas Department shall immediately reinstate such license upon notification of such acquittal or dismissal by the county clerk of the county in which the case was pending. Notification to the Director of the Texas Department of Public Safety shall be made by certified mail.]

Sec. 3. [(a) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle and while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by chemical analysis of the his blood, breath, urine, or any other bodily substance, shall be admissible and if there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.]

(a) [(b)] Analysis [chemical analysis] of a specimen of the person's breath, to be considered valid under the provision of this section, must be performed according to rules of [methods approved by] the Texas Department of Public Safety and by an individual possessing a valid certificate issued by the Texas Department of Public Safety for this purpose. The Texas Department of Public Safety is authorized to establish rules approving [approve] satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. These certifications shall be subject to termination or revocation, for cause, at the discretion of the Texas Department of Public Safety.

(b) [(c)] When a person gives a specimen of blood [shall submit to a blood test] at the request of a peace [law enforcement] officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse under the supervision or direction of a licensed physician may withdraw a blood specimen for the purpose of determining the alcohol concentration [alcoholic content] therein. The sample must be taken by a physician or in a physician's office or a hospital licensed by the Texas Department of Health. This limitation shall not apply to the taking of breath specimens. The person drawing the blood specimen at the request or order of a peace [law enforcement] officer under the provisions of this Act, or the hospital where that person is taken for the purpose of securing the blood specimen, shall not be held liable for damages

arising from the request of the peace ~~[law enforcement]~~ officer to take the blood^{oo} specimen as provided herein, provided the blood^{oo} specimen was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood specimen ~~[sample]~~. Breath specimens taken at the request of the peace officer must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety, and by such persons as the Texas Department of Public Safety has certified to be qualified.

(c) ~~[(d)]~~ The person who submitted to a test in connection with this Act ~~[tested]~~ may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing draw a specimen and have an analysis made of his blood ~~[administer a chemical test, or tests,]~~ in addition to any specimen taken and analyzed ~~[administered]~~ at the direction of the peace ~~[law enforcement]~~ officer. The failure or inability to obtain an additional specimen or analysis ~~[test]~~ by a person shall not preclude the admission of evidence relating to the analysis of the specimen ~~[test, or tests,]~~ taken at the direction of the peace ~~[law enforcement]~~ officer under this Act.

(d) ~~[(e)]~~ Upon the request of a person who has given a specimen ~~[submitted to a chemical test, or tests,]~~ at the request of a peace ~~[law enforcement]~~ officer, full information concerning the analytical results of the test ~~[,]~~ or tests of the specimen ~~[,]~~ shall be made available to him or his attorney.

(e) ~~[(f)]~~ If for any reason the person's request to have a specimen taken ~~[chemical test for intoxication]~~ is refused by the officer or any other person acting for or on behalf of the state, such fact may be introduced into evidence on the trial of such person.

SECTION 4. Section 42.08 of the Penal Code and Articles 67011-1 and 67011-2, Revised Civil Statutes are repealed.

SECTION 5. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. This Act takes effect September 1, 1983.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Sarpalius, the amendment was tabled by the following vote: Yeas 26, Nay 3.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parmer, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Mauzy, Santiesteban, Washington.

Absent-excused: Glasgow, Parker.

Senator Parmer offered the following amendment to the bill:

Amend Section 9 of C.S.S.B. 1 by amending subsection (b) of Section 6b, and sub-subsection (1) thereof, to read as follows:

“(b) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c), (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit

to: "(1) 24 hours of detention in a jail or 24 hours of public service work to be set by the court having jurisdiction of the case, upon the choice of the defendant, if the defendant was convicted under Subsection (c) of Article 67011-1, Revised Statutes; 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, 30 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes, or 180 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes; or

The amendment was read.

On motion of Senator Sarpalius, the amendment was tabled by the following vote: Yeas 22, Nays 7.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Sarpalius, Sharp, Sims, Traeger, Whitmire, Williams.

Nays: Mauzy, Parmer, Santiesteban, Truan, Uribe, Vale, Washington.

Absent-excused: Glasgow, Parker.

On motion of Senator Sarpalius and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 1 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent-excused: Glasgow, Parker.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the final passage of the bill.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 272 - By Kothmann: Commending United State Army Health Services Command at Fort Sam Houston on its exemplary public service and congratulating it on the occasion of its 10th anniversary.

S.R. 273 - By Farabee: Extending welcome to Tiffany Hart, Honorary Messenger of the Day.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 12:30 o'clock p.m. adjourned until 11:00 o'clock a.m. tomorrow.

APPENDIX

Sent to Governor
(March 15, 1983)

S.C.R. 39

THIRTY-SIXTH DAY

(Wednesday, March 16, 1983)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Absent-excused: Glasgow.

A quorum was announced present.

Associate Minister Georjean Blanton, Kessler Park Methodist Church, Dallas, offered the invocation as follows:

Gracious God, We pause for a moment from the busyness of our day to praise You and give You thanks. As we pause together, Lord, we are aware of our differences as individuals. We come from different places, with different concerns, with different hopes and with different dreams. We celebrate Your creative spirit within each of us.

As we gather, Lord, we pray that You would make us ever mindful of the awesome responsibility of the task which we share. Make us aware that in our differences we share a common cause, a common hope, a common dream. We share the dream that our world, our country, our state might be a place in which Your will is done.

Strengthen, guide and direct these persons who are elected to be Your servants. May they serve with the integrity and the justice that comes from knowing You.

We pray in the Name of Your Son and our Brother, Jesus Christ. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Glasgow was granted leave of absence for today on account of important business on motion of Senator Brooks.

CO-AUTHOR OF SENATE BILL 23

On motion of Senator Williams and by unanimous consent, Senator Sharp will be shown as Co-author of S.B. 23.

CO-AUTHOR OF SENATE BILL 25

On motion of Senator Truan and by unanimous consent, Senator Whitmire will be shown as Co-author of S.B. 25.